

**Statutory Provisions and Administrative Rules Related to the
Wholesale Distribution, Pricing, and Taxation of Spirits
Sold by Agency Liquor Stores in Maine**

Maine Revised Statutes Annotated Title 28-a: Liquors

Wholesale Distribution of Spirits

Chapter 3-a: Administration and Organization

28-a M.R.S.A. § 90. Contract for operations of wholesale liquor activities

1. Statement of purpose. The Legislature finds that it is in the public interest to seek efficiencies and maximize growth in the State's wholesale spirits business while ensuring that growth in revenue from the business is achieved in a socially responsible manner. The contracting of the operations of the wholesale spirits business should serve this purpose and provide the State's agency liquor store partners with effective and efficient services in order to responsibly serve consumers of spirits in the State.

2. Contract for operations. The Commissioner of Administrative and Financial Services, referred to in this section as "the commissioner," shall enter into a contract for warehousing, distribution and spirits administration and a contract for spirits trade marketing, each for a term of 10 years. Each contract must be awarded pursuant to a competitive bid process in a manner similar to the process described in Title 5, chapter 155, subchapter 1-A. The commissioner is prohibited from contracting with a bidder who also holds a license in this State or another state to distill, bottle or manufacture spirits.

3. Development of request for bid proposals; fee. The commissioner shall develop a request for proposals designed to encourage vigorous bidding for the purpose of awarding 2 contracts for the operations of the State's wholesale spirits business. The commissioner shall request bids for the operation of spirits trade marketing separately from bids for the combined operations of warehousing, distribution and spirits administration. In order to be considered for a contract to conduct spirits trade marketing, a bidder must submit a nonrefundable application fee of up to \$5,000. In order to be considered for a contract to conduct warehousing, distribution and spirits administration, a bidder must submit a nonrefundable application fee of up to \$20,000. The application fee must be credited to an Other Special Revenue Funds account within the division of purchases within the Department of Administrative and Financial Services to be used for managing the application process. A request for proposals must inform potential bidders of the State's target gross revenue profit margin over the term of the contract and require the bidder to affirm that the bidder, or any of the principal officers of the bidder, does not hold or have a direct financial interest in a license or permit in this State or any other state for the distillation, bottling or manufacture of alcoholic beverages. The request for proposals must instruct potential bidders to propose the scope of operations the bidder will provide and the fee for that service expressed as a percentage of revenue generated by the

wholesale business. The request for proposals must direct bidders to indicate if the bidder intends to use subcontractors and to identify those subcontractors. The request for proposals must also inform potential bidders that they may propose incentives for the bidder intended to encourage responsible growth of revenue and enhanced efficiencies in services provided.

4. Information provided by bidders. A bidder seeking consideration of the award of a contract for the operations of the State's wholesale spirits business pursuant to this section shall comply with the requirements of this subsection.

A. A bidder on a contract to operate the warehousing, distribution and spirits administration functions of the wholesale spirits business shall identify services or operations for which the bidder may use a subcontractor and shall demonstrate:

- (1) The bidder's financial capacity and access to capital to maintain the operations;
- (2) The bidder's capabilities to provide adequate transportation and distribution of liquor to agency liquor stores;
- (3) The bidder's warehousing capabilities and proposed bailment rates for liquor and related fees to be charged to liquor suppliers;
- (4) That the bidder, including any principal officer of the bidder and any named subcontractor, is of good moral character and has not been found to have violated any state or federal law or rule governing the manufacture, distribution or sale of alcoholic beverages;
- (5) The bidder's knowledge of the wholesale liquor business, alcoholic beverage industry or a related field;
- (6) The bidder's plan to provide agency liquor stores with a minimum of 2 deliveries per week;
- (7) The bidder's methods for processing orders and invoices, including any minimum ordering requirements, split case restrictions and inventory control plans;
- (8) The bidder's business plan to provide services in a manner that will assist the State in achieving a target growth rate comparable to or exceeding that of other states that control the sale and distribution of alcoholic beverages;
- (9) The bidder's plan for enhancing services to liquor suppliers and agency liquor stores; and
- (10) The positive impact on the economy, employment and state revenues that the bidder's overall proposal will provide.

B. A bidder on a contract to provide spirits trade marketing shall:

- (1) Demonstrate the bidder's business plan and marketing strategies to encourage responsible growth to the wholesale spirits business;
- (2) Demonstrate the bidder's experience or knowledge, if any, of responsible marketing of alcoholic beverages;
- (3) Identify services for which the bidder may use a subcontractor;

(4) Demonstrate that the bidder, including any principal officer of the bidder and any named subcontractor, is of good moral character and has not been found to have violated any state or federal law or rule governing the manufacture, distribution or sale of alcoholic beverages; and

(5) Demonstrate the positive impact on the economy, employment and state revenues that the bidder's overall proposal will provide.

In addition to the requirements of paragraphs A and B, the commissioner, in order to ensure that the objective of maximizing growth in the State's wholesale spirits business is achieved, may require bidders to provide additional information, including disclosure of the potential of a bidder's direct and substantial conflict of interest with the State's financial interest.

5. Award criteria and issuance of contract. The commissioner shall select successful bidders for the contract to conduct the operations of warehousing, distribution and spirits administration and the contract to provide spirits trade marketing; however, both contracts may be awarded to the same bidder. The commissioner shall choose the best value bidder in conformity with Title 5, section 1825-B, subsection 7 and shall consider as criteria for award the information required to be provided in subsection 4, as applicable. When selecting a successful bidder for the contract to conduct the operations of warehousing, distribution and spirits administration, the commissioner may not consider as cause for disqualification for consideration any weakness in or inability to demonstrate proficiency in any one criterion listed in subsection 4, paragraph A, subparagraphs (6) to (10).

The commissioner shall ensure that the following criteria are met before entering into a contract with a bidder for operations of warehousing, distribution and spirits administration:

A. That revenue to the State from the sale of spirits is predictable over the term of the contract;

B. That revenue from the sale of spirits will be maximized by the issuance of the contract and achieved through efficiency of services or profit sharing or both;

C. That the contract establishes standards of efficiency and quality of operations;

D. That the bidder has demonstrated that services provided to agency liquor stores will be enhanced;

E. That, upon execution of the contract, the disruption of services to agency liquor stores and suppliers will be minimal or absent; and

F. That the contract provides that the bureau must approve all bailment rates and related fees.

6. Contract provisions; oversight and performance review. A contract provided to a successful bidder in accordance with this section must require that the person awarded the contract submit to the bureau, in a form determined by the bureau, an annual report audited by an independent 3rd party. The bureau, following receipt of the report, shall provide the report annually to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and alcoholic beverages matters. The

contract must prohibit the person awarded the contract from engaging in activities reserved for agency liquor stores licensed as reselling agents to provide spirits to establishments licensed for on-premises consumption. The contract must also include provisions that allow for ongoing performance standards review so that deficiencies in such standards may result in amendments to the contract or nullification. Performance standards subject to contract amendments or nullification include:

A. Working in partnership with the State to achieve the goal of a revenue growth rate comparable to the average growth rate of other states that control the sale and distribution of alcoholic beverages;

B. Transparency in annual reporting and conformance to the reporting requirements established by the bureau; and

C. Except for a contract awarded to conduct spirits trade marketing, responsiveness to the service needs of agency liquor stores.

7. Price regulation. The bureau shall regulate the wholesale and retail prices of all liquor sold by a person awarded a contract in accordance with this section.

Chapter 21: Wholesale Liquor Provider

28-a M.R.S.A. § 501. Wholesale liquor provider; definition

As used in this chapter, unless the context otherwise indicates, “wholesale liquor provider” means an entity or entities contracted by the State as an agent of the State for the purpose of providing wholesale spirits to establishments licensed by the State to sell spirits for off-premises consumption.

28-a M.R.S.A. § 502. Wholesale liquor provider prohibited from holding an agency liquor store license

A wholesale liquor provider is prohibited from holding a retail license to sell liquor for off-premises consumption.

28-a M.R.S.A. § 503. Sale to on-premises licensees prohibited

A wholesale liquor provider shall sell spirits to establishments licensed by the State to sell liquor for off-premises consumption. A wholesale liquor provider is prohibited from selling spirits directly to establishments licensed by the State to sell liquor for on-premises consumption.

Pricing and Taxation of Spirits Sold by Agency Liquor Stores

Chapter 19: Agency Liquor Stores

28-a M.R.S.A. § 455. Liquor for agency liquor stores

1. Agency liquor store purchases. Agency liquor stores shall buy their liquor from the bureau under section 606.
2. Monthly specials. The bureau may establish monthly specials for all agency liquor stores. The issuance of an agency liquor store license and the operation of agency liquor stores licensed pursuant to this Part are governed by this chapter.

Chapter 25: General Provisions

28-a M.R.S.A. § 606. Liquor bought from bureau; sale to government agencies

1. Purchase of liquor. Subject to the restrictions provided in subsection 1-A, a person licensed to sell spirits and fortified wine must purchase spirits and fortified wine from an agency liquor store. This subsection does not apply to public service corporations operating interstate.

1-A. On-premises licensees; purchase from agency store. A person licensed to sell spirits for consumption on the premises shall purchase spirits from an agency liquor store only in accordance with this subsection.

A. Beginning November 30, 2003, the sale price of spirits sold to an establishment licensed for on-premises consumption must equal the price established by the commission.

B. Upon completion of a transaction, the agency liquor store and the on-premises licensee shall each retain a copy of the licensee order form.

1-B. Repealed. Laws 1997, c. 24, § L-1.

1-C. Price of state liquor sales to agency liquor stores. The bureau may offer discounts below the list price on liquor sold to agency liquor stores.

1-D. Purchase of spirits. Subject to the restrictions provided in subsection 1-A, a person licensed to sell spirits for on-premises consumption must purchase spirits from a reselling agent. This subsection does not apply to public service corporations operating interstate.

2. On-premises retailers must report purchases. All persons licensed to sell liquor to be consumed on the premises shall report all liquor purchases to the bureau in a manner determined by the bureau.

3. Prospective licensees may order liquor in advance. Upon approval of the bureau, persons who have been issued a license, effective at a future date, may order liquor in advance of the effective date of the license and may advertise the effective date.

4. Repealed. Laws 2013, c. 476, § A-21, effective June 30, 2014.

4-A. Discount rates for agency liquor stores; rulemaking. Beginning July 1, 2014 the bureau shall set the price of spirits at a minimum discount of 12% of the list price. The bureau may establish discount rates greater than 12%, including graduated discount rates, but those discount rates must be established by rules that ensure that any graduated discount rate is structured in a way that does not adversely affect agency liquor stores that stock a low level of inventory. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

5. Sale to government instrumentalities. The bureau may authorize the sale of spirits to government instrumentalities within the State approved by the bureau. The bureau shall set the price.

6. Sale to airlines and ferry services for consumption outside the State. The bureau may authorize the sale of spirits not for consumption within the State to airlines and ferry services or their agents as authorized by the bureau. The bureau shall set the price.

7. Premium must be collected. Nothing in this section permits the sale of spirits without collecting the entire premium assessed under chapter 65. (28-a M.R.S.A. § 1651)

8. Limits on price. An agency liquor store shall sell all spirits purchased from the bureau or through an entity awarded a contract under section 90 at the retail price established by the commission.

Chapter 65: Taxes

28-a M.R.S.A. § 1651. Consumers' tax

1. State liquor tax. Except as provided in subsection 2, the commission shall determine and set the list price at which to sell all spirits that will produce an aggregate state liquor tax sufficient to pay all liquor-related expenses of the Bureau of Alcoholic Beverages and Lottery Operations and to return to the General Fund an amount substantially equal to the amount of state liquor tax collected in the previous fiscal year.

A, B. Deleted. Laws 1993, c. 615, § 5.

C. The commission shall add any cost to the State related to handling containers returned for refund pursuant to Title 32, section 1863-A to the established price without markup.

2. Special pricing situations. The bureau may set prices at different levels than those established by the commission in the following special situations.

A, B. Deleted. Laws 1993, c. 615, § 5.

C. Notwithstanding the other provisions of this section, with approval of the Commissioner of Administrative and Financial Services, the bureau may reduce the price

of liquor that, as determined by the bureau by rule, is unlikely to be sold for the list price. Rules adopted to implement this paragraph are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

D. Repealed. Laws 1993, c. 615, § 6.

E. Notwithstanding the other provisions of this section, the bureau may establish special prices on certain listed liquor items to be made available to the consumer at all agency stores.

F. Spirits sold under section 606 may be sold at prices established under section 606.

G. Notwithstanding the other provisions of this section, the bureau may reduce, at the expense of the broker or supplier, the price of those test-market items that fail to meet set minimum gross profit standards after a 3-month period.

3. Applicability of tax. Taxes on spirits imposed by the State do not apply to sales of spirits by manufacturers, bottlers and rectifiers holding licenses from the commission:

A. To any instrumentality of the United States;

B. To any vessel of foreign registry;

C. To industrial establishments for use as an ingredient in the manufacture of food products; or

D. For use as an ingredient in the manufacture of commodities which by reason of their nature cannot be used for beverage purposes.

4. Net revenue deposited to General Fund. All net revenues derived from the tax under this section must be credited to the General Fund.

Administrative Rules Related to Pricing of Spirits Sold by Agency Liquor Stores

Code of Maine Rules 18-553: Bureau of Alcoholic Beverages and Lottery Operations

18-553 CMR Ch. 2, § I. Definitions

As used in this Rule, unless otherwise indicated, the following words and phrases are defined as follows:

A. Agency liquor store. “Agency liquor store” means a person who is licensed by the Bureau to sell spirits for off-premise consumption. Agency liquor stores are the sole source of spirit sales to on-premise licensees.

B. Bureau. “Bureau” means the Bureau of Alcoholic Beverages and Lottery Operations within the Department of Administrative and Financial Services.

C. Commission. “Commission” means the State Liquor and Lottery Commission established by 5 M.R.S §12004-G, sub-§14.

D. Director. “Director” means the Director of the Bureau of Alcoholic Beverages and Lottery Operations.

E. Line extension. “Line extension” means the introduction of an additional bottle size of a currently approved spirits product or the introduction of an additional flavor in the same size of a currently approved spirits product.

F. List price. “List price” means the regular retail price of spirits products as approved by the Commission.

G. NABCA. “NABCA” means the National Alcohol Beverage Control Association which is a trade association representing eighteen (18) jurisdictions known as “control jurisdictions.” Control jurisdictions regulate the wholesale and retail sale and distribution of alcohol within those jurisdictions.

H. Premises. “Premises” means all parts of the contiguous real estate occupied by a person licensed in any way by the Bureau over which that person has direct or indirect control or interest, that the person uses in the operation of a business licensed by the Bureau and that has been approved by that department as proper places for the exercise of a licensed privilege. Premises includes the places defined in 28-A M.R.S §2, sub-§24, ¶¶A and B.

I. Special price. “Special price” means a temporary reduction of a list price for a specific spirits product as approved by the Director.

J. Spirits or Spirits Product(s). “Spirits” or “Spirits Product(s)” means any liquor produced by distillation or, if produced by any other process, strengthened or fortified by the addition of distilled spirits of any kind. Spirits does not include low-alcohol spirits products as that term is defined in 28-A M.R.S§2, sub-§16-A or fortified wine as that term is defined in 28-A M.R.S. §2, sub-§11-B.

K. State's Spirits Distribution Contractor. “State's Spirits Distribution Contractor” means an entity or entities contracted by the State to distribute spirits to establishments licensed by the Bureau to sell liquor for off-premise consumption. The State's Spirits Distribution Contractor is prohibited from selling spirits directly to establishments licensed by the Bureau to sell spirits for on-premise consumption.

L. Supplier. “Supplier” means a person who distills, rectifies, brews, ferments, bottles, or otherwise produces spirits.

M. Supplier's Representative. “Supplier's Representative” means a person or group, licensed as a sales representative in the State of Maine, contracted by a supplier to be the sole representative of the supplier's product at the retail and wholesale level.

N. Vendor of record. “Vendor of record” means the “primary source of supply,” as that term is defined in 28-A M.R.S §1451, sub-§3.

18-553 CMR Ch. 2, § II. Pricing

All final list and special pricing decisions shall be made solely by the Director in accordance with this Rule and Title 28-A of Maine law. Final list pricing decisions by the Director are subject to the approval of the Commission.

A. Pricing of New Spirits Products

1. After the Commission has approved a new spirits product for listing, the Director shall propose a price for the spirits product subject to the approval of the Commission for that spirits product.

2. The Director shall establish the list price of new spirits products and may take into account any of the following factors:

- a. The NABCA price exchange book;
- b. The NABCA retail price index;
- c. New England control states' current retail pricing;
- d. Costs of similar products in an applicable category and sold in Maine;
- e. Whether a product is a line extension;
- f. Whether a spirits product has an acceptable gross profit margin;
- g. The cost of product, including freight, supplier's insurance, applicable bailment, and other similar charges;
- h. Agency store profit margin; and
- i. Price point adjustments.

3. Retail price points for products packaged at 375 milliliter or larger shall be limited to the following values: \$XX.49 or \$xx.99. Retail price points for products under 375 milliliter shall be limited to the following values: \$XX.29; \$XX.49; \$XX.79 or \$XX.99.

B. List Price Changes

1. List price change requests may be submitted to the Director by suppliers, suppliers, representatives, or vendors of record.

2. Review of list price change requests shall be completed quarterly by the Director and approved by the Commission, with any price changes effective by the first day of the following months: February, May, August, and November.

3. All requests for list price changes must be submitted in a form or format as prescribed by the Director at least ninety (90) days prior to the first of each month in which a price change, if approved, would be effective.

4. List prices may be reviewed monthly by the Director, regardless of whether a request has been made. The Director will notify suppliers, suppliers' representatives or vendors of record of any price changes initiated under this subsection at least sixty (60) days in advance of the effective date of any change.

5. The following process shall occur with respect to list price decisions:

- a. Prior to rendering final decisions on list prices, the Director shall make a preliminary decision on list prices being considered.
- b. Notice of the Director's preliminary decision on list prices shall be given to suppliers, supplier's representatives, vendors of record, or other stakeholders, any of whom may comment on the Director's preliminary decision. Notice may be given by the Director electronically or in hardcopy. All comments concerning the Director's preliminary decision about list prices must be submitted in writing within ten (10) days of the notice.
- c. After receiving and reviewing comments submitted pursuant to paragraph b of this subsection, the Director shall issue final decisions on any list prices within fifteen (15) days of the close of the comment period.
- d. At its next scheduled meeting, the Commission will consider any of the Director's decisions on list prices and determine whether to approve or disapprove the Director's final price decisions.
- e. If any of the Director's price change decisions are not approved by the Commission, the list price will not be changed and subsequent change requests may be submitted during the next pricing cycle as set forth in these Rules.
- f. The Commission's determination of whether to approve or disapprove the Director's list price change decisions is final.

C. Special Pricing

1. Suppliers, supplier's representatives or vendors of record may request, in writing, special pricing for products packaged at 375 milliliter and higher to the Director.
2. All requests and recommendations must be made sixty (60) days prior to the requested effective date of the proposed special price.
3. The Director's decision on special price requests and recommendations is final.
4. All cost-sharing decisions related to special pricing shall be authorized solely at the discretion of the Director. Only the State shall participate in cost-sharing with the suppliers, suppliers' representatives or vendors of record.
5. Special pricing of spirits products may also be initiated by the Director at the Director's discretion.
6. In making a special pricing decision, the Director may consider any of the following factors:
 - a. Whether the subject spirits product has been out of stock ninety (90) days prior to the special price request;
 - b. Performance of the subject spirits product if the spirits product has been specially priced previously;
 - c. The amount of cost-sharing between the supplier, supplier's representative or vendors of record and the State;
 - d. Seasonal and promotional factors; and

- e. Any of the criteria listed in section II(A)(2) of these Rules.

18-553 CMR Ch. 2, § III. Agency Liquor Store Profit Margin

A. Minimum Discounts. Agency liquor stores must purchase spirits products from the State. The State will sell spirits products to agency liquor stores at wholesale prices (discount off retail prices) based on the retail prices of spirits products as follows:

1. For spirits products at a retail price of \$24.99 or less, the discount rate is twelve percent (12%) of the list price; and
2. For spirits products at a retail price of \$25.00 or more, the discount rate is fourteen percent (14%) of the list price.

B. Growth Incentive. BABLO seeks the support of agency liquor stores to achieve its volume recovery/growth objective. To reward this support, the Bureau will increase Minimum Discounts as follows:

1. To be eligible for a growth incentive, the growth of nine (9) liter cases must meet or exceed a minimum total growth rate of 4.5% (four and 1/2 percent). Growth of less than 4.5% (four and 1/2 percent) over the previous year would not produce a discount increase.

2. The growth achieved in any year will increase the discount rate starting the following year. FY15 is year one and performance that year would earn the discount rate increase, if achieved, starting in FY16.

3. The discount rate increase would increase as follows for growth:

a. For growth of nine (9) liter cases of 4.5% (four and 1/2 percent), the discount rate increases by 0.75% (3/4 of one percent);

b. For growth of nine (9) liter cases of 5% (five percent), the discount rate increases by 1.00% (one percent);

c. For growth of nine (9) liter cases of 5.5% (five and 1/2 percent), the discount rate increases by 1.75% (one and 3/4 percent); or

d. For growth of nine (9) liter cases of 6.0% (six), the discount rate increases by 2.50% (two and 1/2 percent).

4. If the gross profit of the spirits business increases more than 10% in any year, the discount rate will be increased by 1.00%. This increase is in addition to the increase described in B.3 of this subparagraph.

5. All discount increases achieved as described in this section would continue each year but would be capped when the total discount rate reaches eighteen percent (18%).

6. Once the discount rate is increased pursuant to subparagraph B.3 and/or B.4, it would not be decreased by the Bureau absent a change in rule or statute.

7. Growth incentives apply to all agency liquor stores equally.